

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-52566

HONORABLE-SIR DOCTOR NANDAN,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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**ORDER DENYING WITHOUT PREJUDICE DEBTOR'S MOTION TO
AVOID THE JUDGMENT LIEN OF DISCOVER BANK**

This case is before the Court on a letter filed by Debtor on January 28, 2009 (Docket # 25), which this Court construes as a motion to avoid Discover Bank's judgment lien on real property located at 2104 McKinstry, Detroit, Michigan ("the Motion"). The Court must deny the Motion, without prejudice, for the following reasons.

First, this bankruptcy case was closed on November 4, 2008, and Debtor has not filed a motion to reopen the case. Debtor must file a motion to reopen the case, and the Court must grant the motion to reopen, before the Court may hear and decide any other motion.

Second, the Motion fails to allege any valid legal basis for avoiding the lien of Discover Bank. It appears from Debtor's Schedule D, filed June 5, 2008 (Docket # 12), that before Debtor filed this bankruptcy case, Discover Bank obtained a judgment lien on Debtor's real property located at 2104 McKinstry, Detroit, Michigan.¹ A Chapter 7 bankruptcy discharge does not, in and of itself, discharge a creditor's lien. "It is firmly established that a lien 'rides through' bankruptcy unaffected, unless the lien is disallowed or avoided." *In re Willis*, 199 B.R. 153, 154

¹ If the judgment lien was obtained *after* the filing of this bankruptcy case, rather than *before* it, the lien may be voidable as a violation of the automatic stay. *See generally Easley v. Pettibone Michigan Corp.*, 990 F.2d 905, 911 (6th Cir. 1993). Debtor's Motion does not allege that Discover Bank obtained its judgment lien after the bankruptcy was filed.

(Bankr. W.D. Ky. 1995) (citing *Johnson v. Home State Bank*, 501 U.S. 78 (1991) and other cases).

It appears from Debtor's Schedules C and D (Docket # 12) that Debtor *may* have a basis to avoid the judicial lien of Discover Bank under 11 U.S.C. § 522(f), which provides, in relevant part:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

11 U.S.C. § 522(f)(1)(A).

For the purposes of [11 U.S.C. § (f)(1)(A)], a lien shall be considered to impair an exemption to the extent that the sum of –

(i) the lien;
(ii) all other liens on the property; and
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2)(A).

But Debtor's Motion does not allege § 522(f) as a basis for avoiding Discover Bank's judgment lien. If Debtor is able to obtain an order reopening this case, however, he may file a motion to avoid the judgment lien based on § 522(f).²

² A motion under Fed.R.Bankr.P. 9014, rather than an adversary proceeding, is the proper procedure to attempt to avoid a lien under § 522(f). *See* Fed.R.Bankr.P. 4003(d), 7001(2).

For these reasons,

IT IS ORDERED that the Motion (Docket # 25), is DENIED, without prejudice to Debtor's right to file a motion to reopen the case, and upon that motion being granted, to file a motion to avoid the judgment lien of Discover Bank under 11 U.S.C. § 522(f), or under any other stated and valid ground.

Signed on January 28, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge